

ASSEMBLY BILL

No. 496

Introduced by Assembly Member Aghazarian

February 16, 2005

An act to amend Section 22350 of the Business and Professions Code, to amend Sections 412.10, 685.090, 1985.3, and 1985.6 of the Code of Civil Procedure, and to amend Section 4013 of the Penal Code, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

AB 496, as introduced, Aghazarian. Service of process.

(1) Existing law requires every person who makes service of process in this state for compensation more than 10 times a year to register as a process server with the county clerk, with specified exceptions including attorneys and their employees and licensed private investigators and their employees.

This bill would limit the latter exceptions to persons when performing acts for which a license is required, and override those exceptions whenever the law requires service by a registered process server.

(2) Existing law provides that a plaintiff may have the clerk issue one or more summons for any defendant.

This bill would require the clerk, in that connection, not to return the original summons, but to maintain it in the file.

(3) Existing law specifies the costs that are added to and become part of a judgment.

This bill would add to those costs, the anticipated cost of levy to be imposed, as specified.

(4) Existing law requires the service of a subpoena duces tecum upon a consumer or an employee to be made, among other

requirements, at least 5 days prior to service upon the custodian of records, plus additional time, as specified, if service is made by mail.

This bill would delete that time requirement and further provide that if the subpoenaing party is the consumer or the employee, and the consumer or the employee is the only subject of the subpoenaed records, no notice is required.

(5) Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding is served, to forthwith deliver it to the prisoner with a note thereon of the time of its service. Existing law provides that if he or she neglects to do so, he or she is liable to the prisoner for all resulting damages.

This bill would limit this provision to papers served by a registered process server. The bill would also specify that all legal process that is so directed to a prisoner and delivered to a jailer, correctional officer, or any person designated by the penal facility to accept service of process shall be deemed to have been personally served through the penal facility representative, who shall be identified by name and title on the proof of service.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22350 of the Business and Professions
- 2 Code is amended to read:
- 3 22350. (a) Any natural person who makes more than 10
- 4 services of process within this state during one calendar year, for
- 5 specific compensation or in expectation of specific
- 6 compensation, where—~~such~~ *that* compensation is directly
- 7 attributable to the service of process, shall file and maintain a
- 8 verified certificate of registration as a process server with the
- 9 county clerk of the county in which he or she resides or has his or
- 10 her principal place of business. Any corporation or partnership
- 11 that derives or expects to derive compensation from service of
- 12 process within this state shall also file and maintain a verified
- 13 certificate of registration as a process server with the county
- 14 clerk of the county in which the corporation or partnership has its
- 15 principal place of business.
- 16 (b) This chapter shall not apply to any of the following:

1 (1) Any sheriff, marshal, or government employee who is
2 acting within the course and scope of his or her employment.

3 (2) An attorney or his or her employees, *when performing acts*
4 *for which a license is required.*

5 (3) Any person who is specially appointed by a court to serve
6 its process.

7 (4) A licensed private investigator or his or her employees,
8 *when performing acts for which a license is required.*

9 (5) A professional photocopier registered under Section
10 22450, or an employee thereof, whose only service of process
11 relates to subpoenas for the production of records, which
12 subpoenas specify that the records be copied by that registered
13 professional photocopier.

14 *(c) Whenever any provision of law requires an act to be*
15 *performed by a registered process server, registration under this*
16 *section is required.*

17 SEC. 2. Section 412.10 of the Code of Civil Procedure is
18 amended to read:

19 412.10. After payment of all applicable fees, the plaintiff may
20 have the clerk issue one or more summons for any defendant.
21 *The clerk shall not return the original summons, but shall*
22 *maintain it in the file.*

23 SEC. 3. Section 685.090 of the Code of Civil Procedure is
24 amended to read:

25 685.090. (a) Costs are added to and become a part of the
26 judgment:

27 (1) Upon the filing of an order allowing the costs pursuant to
28 this chapter.

29 (2) If a memorandum of costs is filed pursuant to Section
30 685.070 and no motion to tax is made, upon the expiration of the
31 time for making the motion.

32 (3) As specified in Section 685.095.

33 (b) The costs added to the judgment pursuant to this section
34 are included in the principal amount of the judgment remaining
35 unsatisfied.

36 *(c) The anticipated cost of levy to be imposed pursuant to*
37 *Section 685.095, may be designated on the notice of levy form as*
38 *a recoverable cost based upon the levying party's memorandum*
39 *of costs filed with the pendency of the levy, subject to limitation*
40 *by a judgment debtor's motion to tax costs.*

1 (d) If a writ or earnings withholding order is outstanding at the
2 time the costs are added to the judgment pursuant to this section,
3 the levying officer shall add the amount of those costs to the
4 amount to be collected pursuant to the writ or earnings
5 withholding order if the levying officer receives either of the
6 following before the writ or earnings withholding order is
7 returned:

8 (1) A certified copy of the court order allowing the costs.

9 (2) A certificate from the clerk of the court that the costs have
10 been added to the judgment where the costs have been added to
11 the judgment after a memorandum of costs has been filed
12 pursuant to Section 685.070 and no motion to tax has been made
13 within the time allowed for making the motion.

14 ~~(e)~~

15 (e) The levying officer shall include the costs described in
16 subdivision ~~(e)~~ (d) in the amount of the sale or collection
17 distributed to the judgment creditor only if the levying officer
18 receives the certified copy of the court order or the clerk's
19 certificate before the distribution is made.

20 SEC. 4. Section 1985.3 of the Code of Civil Procedure is
21 amended to read:

22 1985.3. (a) For purposes of this section, the following
23 definitions apply:

24 (1) "Personal records" means the original, any copy of books,
25 documents, other writings, or electronic data pertaining to a
26 consumer and which are maintained by any "witness" which is a
27 physician, dentist, ophthalmologist, optometrist, chiropractor,
28 physical therapist, acupuncturist, podiatrist, veterinarian,
29 veterinary hospital, veterinary clinic, pharmacist, pharmacy,
30 hospital, medical center, clinic, radiology or MRI center, clinical
31 or diagnostic laboratory, state or national bank, state or federal
32 association (as defined in Section 5102 of the Financial Code),
33 state or federal credit union, trust company, anyone authorized by
34 this state to make or arrange loans that are secured by real
35 property, security brokerage firm, insurance company, title
36 insurance company, underwritten title company, escrow agent
37 licensed pursuant to Division 6 (commencing with Section
38 17000) of the Financial Code or exempt from licensure pursuant
39 to Section 17006 of the Financial Code, attorney, accountant,
40 institution of the Farm Credit System, as specified in Section

1 2002 of Title 12 of the United States Code, or telephone
2 corporation which is a public utility, as defined in Section 216 of
3 the Public Utilities Code, or psychotherapist, as defined in
4 Section 1010 of the Evidence Code, or a private or public
5 preschool, elementary school, secondary school, or
6 postsecondary school as described in Section 76244 of the
7 Education Code.

8 (2) “Consumer” means any individual, partnership of five or
9 fewer persons, association, or trust which has transacted business
10 with, or has used the services of, the witness or for whom the
11 witness has acted as agent or fiduciary.

12 (3) “Subpoenaing party” means the person or persons causing
13 a subpoena duces tecum to be issued or served in connection with
14 any civil action or proceeding pursuant to this code, but shall not
15 include the state or local agencies described in Section 7465 of
16 the Government Code, or any entity provided for under Article
17 VI of the California Constitution in any proceeding maintained
18 before an adjudicative body of that entity pursuant to Chapter 4
19 (commencing with Section 6000) of Division 3 of the Business
20 and Professions Code.

21 (4) “Deposition officer” means a person who meets the
22 qualifications specified in Section 2020.420.

23 (b) Prior to the date called for in the subpoena duces tecum for
24 the production of personal records, the subpoenaing party shall
25 serve or cause to be served on the consumer whose records are
26 being sought a copy of the subpoena duces tecum, of the affidavit
27 supporting the issuance of the subpoena, if any, and of the notice
28 described in subdivision (e), and proof of service as indicated in
29 paragraph (1) of subdivision (c). This service shall be made as
30 follows:

31 (1) To the consumer personally, or at his or her last known
32 address, or in accordance with Chapter 5 (commencing with
33 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to
34 his or her attorney of record. If the consumer is a minor, service
35 shall be made on the minor’s parent, guardian, conservator, or
36 similar fiduciary, or if one of them cannot be located with
37 reasonable diligence, then service shall be made on any person
38 having the care or control of the minor or with whom the minor
39 resides or by whom the minor is employed, and on the minor if
40 the minor is at least 12 years of age.

1 (2) Not less than 10 days prior to the date for production
2 specified in the subpoena duces tecum, plus the additional time
3 provided by Section 1013 if service is by mail.

4 ~~(3) At least five days prior to service upon the custodian of the~~
5 ~~records, plus the additional time provided by Section 1013 if~~
6 ~~service is by mail.~~

7 (c) Prior to the production of the records, the subpoenaing
8 party shall do either of the following:

9 (1) Serve or cause to be served upon the witness a proof of
10 personal service or of service by mail attesting to compliance
11 with subdivision (b).

12 (2) Furnish the witness a written authorization to release the
13 records signed by the consumer or by his or her attorney of
14 record. The witness may presume that any attorney purporting to
15 sign the authorization on behalf of the consumer acted with the
16 consent of the consumer, and that any objection to release of
17 records is waived.

18 (d) A subpoena duces tecum for the production of personal
19 records shall be served in sufficient time to allow the witness a
20 reasonable time, as provided in Section 2020.410, to locate and
21 produce the records or copies thereof.

22 (e) Every copy of the subpoena duces tecum and affidavit, if
23 any, served on a consumer or his or her attorney in accordance
24 with subdivision (b) shall be accompanied by a notice, in a
25 typeface designed to call attention to the notice, indicating that
26 (1) records about the consumer are being sought from the witness
27 named on the subpoena; (2) if the consumer objects to the
28 witness furnishing the records to the party seeking the records,
29 the consumer must file papers with the court or serve a written
30 objection as provided in subdivision (g) prior to the date
31 specified for production on the subpoena; and (3) if the party
32 who is seeking the records will not agree in writing to cancel or
33 limit the subpoena, an attorney should be consulted about the
34 consumer's interest in protecting his or her rights of privacy. If a
35 notice of taking of deposition is also served, that other notice
36 may be set forth in a single document with the notice required by
37 this subdivision.

38 (f) A subpoena duces tecum for personal records maintained
39 by a telephone corporation which is a public utility, as defined in
40 Section 216 of the Public Utilities Code, shall not be valid or

1 effective unless it includes a consent to release, signed by the
2 consumer whose records are requested, as required by Section
3 2891 of the Public Utilities Code.

4 (g) Any consumer whose personal records are sought by a
5 subpoena duces tecum and who is a party to the civil action in
6 which this subpoena duces tecum is served may, prior to the date
7 for production, bring a motion under Section 1987.1 to quash or
8 modify the subpoena duces tecum. Notice of the bringing of that
9 motion shall be given to the witness and deposition officer at
10 least five days prior to production. The failure to provide notice
11 to the deposition officer shall not invalidate the motion to quash
12 or modify the subpoena duces tecum but may be raised by the
13 deposition officer as an affirmative defense in any action for
14 liability for improper release of records.

15 Any other consumer or nonparty whose personal records are
16 sought by a subpoena duces tecum may, prior to the date of
17 production, serve on the subpoenaing party the witness, and the
18 deposition officer, a written objection that cites the specific
19 grounds on which production of the personal records should be
20 prohibited.

21 No witness or deposition officer shall be required to produce
22 personal records after receipt of notice that the motion has been
23 brought by consumer, or after receipt of a written objection from
24 a nonparty consumer, except upon order of the court in which the
25 action is pending or by agreement of the parties, witnesses, and
26 consumers affected.

27 The party requesting a consumer's personal records may bring
28 a motion under Section 1987.1 to enforce the subpoena within 20
29 days of service of the written objection. The motion shall be
30 accompanied by a declaration showing a reasonable and good
31 faith attempt at informal resolution of the dispute between the
32 party requesting the personal records and the consumer or the
33 consumer's attorney.

34 (h) Upon good cause shown and provided that the rights of
35 witnesses and consumers are preserved, a subpoenaing party
36 shall be entitled to obtain an order shortening the time for service
37 of a subpoena duces tecum or waiving the requirements of
38 subdivision (b) where due diligence by the subpoenaing party has
39 been shown.

1 (i) Nothing contained in this section shall be construed to
2 apply to any subpoena duces tecum which does not request the
3 records of any particular consumer or consumers and which
4 requires a custodian of records to delete all information which
5 would in any way identify any consumer whose records are to be
6 produced.

7 (j) This section shall not apply to proceedings conducted under
8 Division 1 (commencing with Section 50), Division 4
9 (commencing with Section 3200), Division 4.5 (commencing
10 with Section 6100), or Division 4.7 (commencing with Section
11 6200) of the Labor Code.

12 (k) Failure to comply with this section shall be sufficient basis
13 for the witness to refuse to produce the personal records sought
14 by a subpoena duces tecum.

15 *(l) If the subpoenaing party is the consumer, and the consumer*
16 *is the only subject of the subpoenaed records, notice is required*
17 *under this section.*

18 SEC. 5. Section 1985.6 of the Code of Civil Procedure is
19 amended to read:

20 1985.6. (a) For purposes of this section, the following
21 definitions apply:

22 (1) "Deposition officer" means a person who meets the
23 qualifications specified in paragraph (3) of subdivision (d) of
24 Section 2020.

25 (2) "Employee" means any individual who is or has been
26 employed by a witness subject to a subpoena duces tecum.
27 "Employee" also means any individual who is or has been
28 represented by a labor organization that is a witness subject to a
29 subpoena duces tecum.

30 (3) "Employment records" means the original or any copy of
31 books, documents, other writings, or electronic data pertaining to
32 the employment of any employee maintained by the current or
33 former employer of the employee, or by any labor organization
34 that has represented or currently represents the employee.

35 (4) "Labor organization" has the meaning set forth in Section
36 1117 of the Labor Code.

37 (5) "Subpoenaing party" means the person or persons causing
38 a subpoena duces tecum to be issued or served in connection with
39 any civil action or proceeding, but does not include the state or
40 local agencies described in Section 7465 of the Government

1 Code, or any entity provided for under Article VI of the
2 California Constitution in any proceeding maintained before an
3 adjudicative body of that entity pursuant to Chapter 4
4 (commencing with Section 6000) of Division 3 of the Business
5 and Professions Code.

6 (b) Prior to the date called for in the subpoena duces tecum of
7 the production of employment records, the subpoenaing party
8 shall serve or cause to be served on the employee whose records
9 are being sought a copy of: the subpoena duces tecum; the
10 affidavit supporting the issuance of the subpoena, if any; and the
11 notice described in subdivision (e), and proof of service as
12 provided in paragraph (1) of subdivision (c). This service shall be
13 made as follows:

14 (1) To the employee personally, or at his or her last known
15 address, or in accordance with Chapter 5 (commencing with
16 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to
17 his or her attorney of record. If the employee is a minor, service
18 shall be made on the minor's parent, guardian, conservator, or
19 similar fiduciary, or if one of them cannot be located with
20 reasonable diligence, then service shall be made on any person
21 having the care or control of the minor, or with whom the minor
22 resides, and on the minor if the minor is at least 12 years of age.

23 (2) Not less than 10 days prior to the date for production
24 specified in the subpoena duces tecum, plus the additional time
25 provided by Section 1013 if service is by mail.

26 ~~(3) At least five days prior to service upon the custodian of the~~
27 ~~employment records, plus the additional time provided by~~
28 ~~Section 1013 if service is by mail.~~

29 (c) Prior to the production of the records, the subpoenaing
30 party shall either:

31 (1) Serve or cause to be served upon the witness a proof of
32 personal service or of service by mail attesting to compliance
33 with subdivision (b).

34 (2) Furnish the witness a written authorization to release the
35 records signed by the employee or by his or her attorney of
36 record. The witness may presume that the attorney purporting to
37 sign the authorization on behalf of the employee acted with the
38 consent of the employee, and that any objection to release of
39 records is waived.

1 (d) A subpoena duces tecum for the production of employment
2 records shall be served in sufficient time to allow the witness a
3 reasonable time, as provided in paragraph (1) of subdivision (d)
4 of Section 2020, to locate and produce the records or copies
5 thereof.

6 (e) Every copy of the subpoena duces tecum and affidavit
7 served on an employee or his or her attorney in accordance with
8 subdivision (b) shall be accompanied by a notice, in a typeface
9 designed to call attention to the notice, indicating that (1)
10 employment records about the employee are being sought from
11 the witness named on the subpoena; (2) the employment records
12 may be protected by a right of privacy; (3) if the employee
13 objects to the witness furnishing the records to the party seeking
14 the records the employee shall file papers with the court prior to
15 the date specified for production on the subpoena; and (4) if the
16 subpoenaing party does not agree in writing to cancel or limit the
17 subpoena, an attorney should be consulted about the employee's
18 interest in protecting his or her rights of privacy. If a notice of
19 taking of deposition is also served, that other notice may be set
20 forth in a single document with the notice required by this
21 subdivision.

22 (f) Any employee whose employment records are sought by a
23 subpoena duces tecum may, prior to the date for production,
24 bring a motion under Section 1987.1 to quash or modify the
25 subpoena duces tecum. Notice of the bringing of that motion
26 shall be given to the witness and the deposition officer at least
27 five days prior to production. The failure to provide notice to the
28 deposition officer does not invalidate the motion to quash or
29 modify the subpoena duces tecum but may be raised by the
30 deposition officer as an affirmative defense in any action for
31 liability for improper release of records.

32 Any nonparty employee whose employment records are sought
33 by a subpoena duces tecum may, prior to the date of production,
34 serve on the subpoenaing party, and the deposition officer, the
35 witness a written objection that cites the specific grounds on
36 which production of the employment records should be
37 prohibited.

38 No witness or deposition officer shall be required to produce
39 employment records after receipt of notice that the motion has
40 been brought by an employee, or after receipt of a written

1 objection from a nonparty employee, except upon order of the
2 court in which the action is pending or by agreement of the
3 parties, witnesses, and employees affected.

4 The party requesting an employee's employment records may
5 bring a motion under subdivision (c) of Section 1987 to enforce
6 the subpoena within 20 days of service of the written objection.
7 The motion shall be accompanied by a declaration showing a
8 reasonable and good faith attempt at informal resolution of the
9 dispute between the party requesting the employment records and
10 the employee or the employee's attorney.

11 (g) Upon good cause shown and provided that the rights of
12 witnesses and employees are preserved, a subpoenaing party
13 shall be entitled to obtain an order shortening the time for service
14 of a subpoena duces tecum or waiving the requirements of
15 subdivision (b) where due diligence by the subpoenaing party has
16 been shown.

17 (h) This section may not be construed to apply to any
18 subpoena duces tecum which does not request the records of any
19 particular employee or employees and which requires a custodian
20 of records to delete all information which would in any way
21 identify any employee whose records are to be produced.

22 (i) This section does not apply to proceedings conducted under
23 Division 1 (commencing with Section 50), Division 4
24 (commencing with Section 3200), Division 4.5 (commencing
25 with Section 6100), or Division 4.7 (commencing with Section
26 6200) of the Labor Code.

27 (j) Failure to comply with this section shall be sufficient basis
28 for the witness to refuse to produce the employment records
29 sought by subpoena duces tecum.

30 (k) *If the subpoenaing party is the employee, and the employee*
31 *is the only subject of the subpoenaed records, notice is not*
32 *required under this section.*

33 SEC. 6. Section 4013 of the Penal Code is amended to read:

34 4013. (a) A sheriff or jailer upon whom a paper in a judicial
35 proceeding, directed to a prisoner in his *or her* custody, is served
36 *by a person specified in Section 22350 of the Business and*
37 *Professions Code, must shall* forthwith deliver it to the prisoner,
38 with a note thereon of the time of its service. For a neglect to do
39 so, he *or she* is liable to the prisoner for all damages occasioned
40 thereby.

1 ***(b) All legal process that is directed to a prisoner and***
2 ***delivered pursuant to subdivision (a) to a jailer, correctional***
3 ***officer, or any person designated by the penal facility to accept***
4 ***service of process shall be deemed to have been personally***
5 ***served through the penal facility representative, who shall be***
6 ***identified by name and title on the proof of service.***